

16. (Amended) The food storage unit of claim 1,  
wherein said lid further comprises a ridge that is  
insertable in between said inner wall and said outer wall.

REMARKS

I. Introduction

Applicant has amended the specification to correct informalities in the use of trademarks.

Claims 1, 2, 4, 6, 7, 9, 10, 13 and 16 have been amended to more particularly point out and distinctly claim the subject matter which applicant regards as the invention.

No new matter has been added by any of the amendments.

Claim 25 has been canceled.

Reconsideration of this application in light of the following remarks is respectfully requested.

II. Restriction Based on 35 U.S.C. § 121

The Examiner issued a restriction requirement pursuant to 35 U.S.C. § 121. In particular, the Examiner has determined that the claims are directed to two distinct inventions, as follows:

I. Claims 1-24, drawn to a food storage unit.

II. Claim 25, drawn to a method of use for storing food.

The Examiner also stated that there are two patentably distinct species of the claimed invention, as follows:

Group 1: FIG. 1 and 2A; and

Group 2: FIG. 6 and 7.

Moreover, the Examiner stated that there were three sub-species of Group 1, based on FIG. 3, FIG. 4 and FIG. 5.

Applicant hereby reaffirms the provisional election made on September 7, 2001 of the invention of Group I, claims 1-24, and sub-species based on FIG. 3 (i.e., Group A). This selection is expressly without waiver of applicant's rights to pursue claims in Group II in one or more divisional applications.

Applicant notes that the Examiner withdrew claims 10-12, 18, 21-23, and 25 from further consideration under 37 C.F.R. § 1.142(b) as being drawn to a non-elected invention. Applicant has canceled claim 25. Applicant notes, however, that if a generic claim is allowed, the non-elected species (i.e., claims 10-12, 18 and 21-23) will rejoin this application.

### III. Objection to the Drawings

The Examiner objected to the drawings under 37 C.F.R. § 1.83(a) as not showing every feature of the invention specified in the claims, and in particular, that the Styrofoam of claim 7 and plastic of claim 8 must be shown or canceled from the claims. Applicant respectfully traverses the Examiner's objection.

Applicant respectfully submits that these features -- the particular type of material used for the insulating material -- are shown in the figures and clearly described in the specification. FIG. 3 clearly shows an insulating material 60, which is described in the specification as including "any insulating material known to persons skilled in the art, such as Styrofoam, ceramics, fiberglass, or anything else suitable for providing insulation" (page 8, lines 28-31).

For at least the above reasons, applicant respectfully requests that the objection to the drawings be withdrawn.

### IV. Objections Related to the Use of Trademarks

The Examiner objected to the improper use of trademarks in the specification and in claim 7. The specification has been amended so that all trademarks are capitalized. Moreover, claim 7 has been amended to use the

generic term "polystyrene foam" instead of the trademark "Styrofoam."

Applicant has thus addressed each of the Examiner's concerns regarding the use of trademarks. Accordingly, applicant respectfully requests that the objections related to trademarks be withdrawn.

**V. The Rejections Based on 35 U.S.C. § 112**

Claims 2, 4, 6-9, 13, and 16 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

Applicant respectfully traverses the rejections under 35 U.S.C. § 112, second paragraph.

Applicant respectfully submits that the claim, as originally filed, fully complied with 35 U.S.C. § 112, second paragraph. In particular, applicant respectfully submits that the Examiner may have misread the claim as further defining the hollow channel, when, in fact, the claims merely used the term hollow channel to further identify the barrier. Nonetheless, applicant has amended claim 2 so that the "hollow channel barrier" is now simply recited as the "barrier." Applicant made similar changes to claims 4, 6, 9, 10, 13 and 16.

Claim 4, in addition to the amendment described above, has been amended to properly recite "said label"

instead of "said labels," and to remove the positive recitation thereof.

Claim 7, as noted above, was amended to correct the indefinite use of a trademark.

For at least the foregoing reasons, applicant respectfully submits that all of the § 112 rejections of the claims have been obviated. Accordingly, applicant respectfully requests that the rejections of the claims under 35 U.S.C. § 112 be withdrawn.

**VI. The Rejections Based on 35 U. S.C. § 102(b)**

The Examiner rejected claims 1-6, 9, 13, 14, 16, 17, 19, 20 and 24 under 35 U.S.C. § 102(b) as being anticipated by Barhite U.S. Patent No. 746,264 (hereinafter "Barhite"), and claims 1-6, 9, 13, 20 and 24 were rejected under 35 U.S.C. § 102(b) as being anticipated by Wooster U.S. Patent No. 242,805 (hereinafter "Wooster").

The Examiner's rejections are respectfully traversed.

Applicant's invention, as recited in originally filed claim 1, is directed toward a food storage container with a fixably SEALED lid, and a hollow channel formed in between an inner and an outer wall. This hollow channel includes a label container area accessible by users for the insertion of labels. Contrary to the Examiner's

suggestion, none of the cited references show or suggest such a feature.

Barhite, for example, discloses a cream separator comprising an inner shell or milk-receptacle 10, a surrounding shell or water-receptacle 14, an annular cover 20 and a secondary cover 23. Cold water is introduced into the water-receptacle 14 to cool the contents of milk-receptacle 10, for the purpose of producing cream.

The Examiner stated that "Barhite discloses a food storage unit having inner and outer walls with a channel therebetween . . . a label may be placed within the channel." (See page 6 of the 9/13/01 Office Action)

Applicant respectfully submits that this is not a fair reading of the prior art, and that there simply is no suggestion anywhere in Barhite that a label could be placed between the inner and outer walls. In fact, in Barhite, the outer shell serves as a water-receptacle that holds cold water for the purpose of cooling the contents of the inner shell. Any label placed therein would be destroyed by the water.

Moreover, applicant has amended claim 1 to recite that at least a portion of the outer wall of the label container area is translucent so that the label may be read

without opening the container. This amendment is consistent with the teachings set forth in applicant's specification which state "that users can easily read the writing on the label without having to open lid 50 to read the label" (page 8, lines 16-18). One of the uses of applicant's invention is to be able to easily identify food stored in a freezer, including, for example, the date the food was placed in the freezer. To that end, it is impractical, if not unsafe, to require the user to open the container to gain access to the label.

Wooster fails as a prior art reference for the same reasons. In particular, Wooster discloses a milk cooler comprising of a cabinet A with a hinged lid B and a door C. A partition D is set in the cabinet, having a central perforation E, into which an elongated milk-receptacle F is placed in a water tight manner. The upper region of the cabinet separated by partition D is lined with sheet metal to form ice-receptacle G. Ice and cold water is introduced into the ice-receptacle G to cool the contents of milk-receptacle F, for the purpose of extracting cream.

As described above with respect to Barhite, Wooster simply does not show or suggest applicant label container area. The region in which, according to the

Examiner, "a label may be placed," is described as being a receptacle for ice and cold water -- not exactly the ideal environment for a label. Thus, there simply is no teaching or suggestion in Wooster of a label container area.

For at least the above reasons, applicant respectfully submits that none of the prior art references, including Barhite and Wooster, alone or in combination, show or suggest the label container area recited in applicant's claims. Accordingly, applicant respectfully submits that claims 1-6, 9, 13, 14, 16, 17, 19, 20 and 24 are patentable.

#### VII. The Rejections Based on 35 U.S.C. § 103(a)

Claims 7, 8, 14, and 15 were rejected under 35 U.S.C. § 103(a) as being obvious over Wooster in view of Hepburn U.S. Patent No. 4,927,041 (hereinafter "Hepburn") and Nelson U.S. Patent No. 5,024,210 (hereinafter "Nelson").

Applicant respectfully traverses the rejection under 35 U.S.C. § 103(a).

Applicant respectfully submits that independent claim 1, as amended, is allowable over any combination of the cited prior art. As noted by the Examiner, Wooster does not show or suggest an outer wall being made of a translucent material. Contrary to the Examiner's

suggestion, drilling or forming holes in a wall does not make that wall translucent. Moreover, as described in the specification. The purpose of the translucent wall is so that the label contained therein may be read. Hepburns's holes are "provided in the lower compartment for filling the lower compartment with water" -- once again, not the best environment for a label.

For at least the above reasons, applicant respectfully submits none of the prior art, either alone or in combination, shows or suggests applicant's claimed label container area. Accordingly, claims 7, 8, 14 and 15 are allowable

#### VIII. Conclusion

The foregoing demonstrates that generic claim 1 and dependent claims 2-24 are allowable. This application is therefore in condition for allowance. Reconsideration and allowance are accordingly respectfully requested.

Respectfully submitted,



Robert W. Morris  
Registration No. 36, 313  
Attorney for Applicant

FISH & NEAVE  
1251 Avenue of the Americas  
New York, New York 10020-1104  
Tel.: (212) 596-9000

## APPENDIX

AMENDED CLAIMS  
MARKED TO SHOW AMENDMENTS

1. (Amended) A food storage unit, comprising:

a container comprising a container top, a container bottom, an inner wall and an outer wall, said inner and outer walls forming a hollow channel therebetween, said hollow channel including a label container area that is accessible by a user for the insertion of a label therein, at least a portion of said outer wall of said label container area being translucent such that a label placed in said label container area may be read without being removed from said food storage unit; and

a lid that may be fixably attached to said container top to seal said container CLOSED.

2. (Amended) The food storage unit of claim 1, wherein said container further comprises:

at least one [hollow channel] barrier positioned parallel to said lid between said inner wall and said outer wall [which limits the depth of said hollow channel].

4. (Amended) The food storage unit of claim 1,  
wherein said container further comprises:

a [hollow channel] barrier positioned on one  
side of said container parallel to said lid between said  
inner wall and said outer wall that [limits the depth of  
said hollow channel and] provides a surface that [said  
labels] a label would rest upon after being inserted into  
said label container area.

6. (Amended) The food storage unit of claim 5,  
wherein container further comprises:

at least one [hollow channel] barrier  
positioned parallel to said lid between said inner wall and  
said outer wall, at least a portion of said insulating  
material being positioned below said [hollow channel]  
barrier.

7. (Amended) The food storage unit of claim 5,  
wherein said insulating material is polystyrene foam  
[Styrofoam].

9. (Amended) The food storage unit of claim 1,  
wherein said container further comprises:

support structure located [within said hollow channel] between said inner wall and said outer wall that provides additional rigidity to said container.

10. (Amended) The food storage unit of claim 9, wherein container further comprises:

at least one [hollow channel] barrier positioned parallel to said lid between said inner wall and said outer wall, at least a portion of said support structure being positioned below said [hollow channel] barrier.

13. (Amended) The food storage unit of claim 9, wherein [said hollow channel includes a portion that is inaccessible by said user,] said container further comprises [comprising]:

a barrier positioned parallel to said lid between said inner wall and said outer wall which renders a portion of space between said inner and outer wall inaccessible to said user;

an insulating material located within said inaccessible portion of space [said hollow channel].

16. (Amended) The food storage unit of claim 1,  
wherein said lid further comprises a ridge that is  
insertable in between said inner wall and said outer wall  
[into said hollow channel].